

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FRANCIS D. PUCCI, JR.,	§
	§ No. 206, 2011
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
	§ for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0811016532
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 29, 2011

Decided: August 31, 2011

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 31st day of August 2011, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Francis D. Pucci, Jr., filed an appeal from the Superior Court’s April 19, 2011 violation of probation (“VOP”) sentencing order. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on

the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, in June 2009, Pucci pleaded guilty to Attempted Robbery in the Second Degree and Criminal Trespass in the Second Degree. He was sentenced to a total of 6 years of Level V incarceration, with credit for 39 days previously served, to be suspended after 60 days for 1 year of Level III probation. In September 2009, Pucci was found to have committed a VOP. He was re-sentenced to a total of 4 years and 6 months at Level V, to be suspended for 1 year of Level IV Work Release, in turn to be suspended after 6 months for probation. In October 2010, Pucci again was found to have committed a VOP. He was re-sentenced to 6 years at Level V, to be suspended after 2 years and 6 months for probation.

(3) Pucci then appealed to this Court on the ground that his latest VOP sentence improperly exceeded his prior VOP sentence. Agreeing with Pucci's claim, the State moved to remand the matter to the Superior Court. On December 7, 2010, this Court remanded the matter to the Superior Court for fact-finding and correction of Pucci's VOP sentence. On remand, the Superior Court again imposed a VOP sentence that exceeded Pucci's prior

¹ Supr. Ct. R. 25(a).

VOP sentence. Pucci again appealed. This Court ordered that the Superior Court provide the transcripts of Pucci's VOP hearings and, at the request of the Superior Court, remanded the matter for correction of Pucci's VOP sentence. On April 19, 2011, the Superior Court re-sentenced Pucci to a total of 4 years and 6 months at Level V, to be suspended after 2 years and 6 months for 1 year and 6 months of Level III probation.

(4) In this appeal from his latest VOP sentence, Pucci claims that the sentence a) violates Del. Code Ann. tit. 11, § 4333(c); and b) is unduly harsh, violating his constitutional rights as well as the Truth-in-Sentencing ("TIS") guidelines.

(5) Pucci's first claim is legally incorrect. Del. Code Ann. tit. 11, § 4333(c), which limits consecutive probationary sentences in multiple criminal cases, is inapplicable to the sentences at issue here, which stem from a single criminal case. To the extent Pucci claims that his sentences violate Section 4333(b), that claim is without merit. Pucci's probationary sentence of 1 year at Level III for attempted robbery and his concurrent probationary sentence of 6 months at Level III for criminal trespass fully comply with the requirements of that statute. To the extent Pucci claims that the Superior Court exceeded its authority in imposing a total of 4 years and 6 months at Level V, Pucci offers no factual basis for that claim. The Superior

Court is authorized to impose the full amount of Level V time remaining on a sentence once it determines that a VOP has been committed.²

(6) As for Pucci's second claim, this Court will not reverse a defendant's sentence unless it is beyond the maximum permitted by statute or results from vindictive or arbitrary action on the part of the Superior Court.³ There is no evidence in the record before us that Pucci's latest VOP sentence either exceeds the statutory maximum or is the result of vindictive or arbitrary action on the part of the Superior Court. Once it was determined that Pucci had committed a VOP, the Superior Court had discretion to re-impose the entire Level V sentence that originally was suspended, minus any Level V time previously served.⁴ Finally, it is well-settled that a defendant has no legal or constitutional right to appeal a statutorily-authorized sentence solely because it does not conform to the TIS sentencing guidelines.⁵ For all of the above reasons, we conclude that Pucci's second claim is without merit.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by

² Del. Code Ann. tit. 11, §4334(c).

³ *Mayes v. State*, 604 A.2d 839, 842-43 (Del. 1992).

⁴ Del. Code Ann. tit. 11, §4334(c).

⁵ *Gaines v. State*, 571 A.2d 765, 766-67 (Del. 1990).

settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice